

**Introduced by Senator Haynes**

December 7, 1998

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An act to amend Section 22 of, and to add Section 1127g to, the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 52, as introduced, Haynes. Voluntary intoxication defense.

(1) Existing law provides that evidence of voluntary intoxication is admissible on the issue of whether or not the defendant actually formed a required specific intent, or, when charged with murder, whether the defendant premeditated, deliberated, or harbored express malice aforethought.

This bill would repeal the above provision and provide instead that every person who commits a violent felony while voluntarily intoxicated, under circumstances which, but for the intoxication, would be sufficient to prove beyond a reasonable doubt the mental state required for a criminal offense, is guilty of that offense, and that evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent in a crime other than a violent felony. This bill would also provide that in any criminal trial of a violent felony where evidence of the defendant's voluntary intoxication has been received, the court shall instruct the jury that it may not consider that evidence as negating the capacity to form or the actual formation of any mental state or specific intent that constitutes an element of the crime charged. Because this bill would expand the scope of existing crimes by eliminating a

defense to those crimes, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22 of the Penal Code is amended  
2 to read:

3 22. (a) No act committed by a person while in a state  
4 of voluntary intoxication is less criminal by reason of his  
5 or her having been in that condition. ~~Evidence of~~  
6 ~~voluntary intoxication shall not be admitted to negate the~~  
7 ~~capacity to form any mental states for the crimes charged,~~  
8 ~~including, but not limited to, purpose, intent, knowledge,~~  
9 ~~premeditation, deliberation, or malice aforethought,~~  
10 ~~with which the accused committed the act. Every person~~  
11 ~~who commits a violent felony, as defined in subdivision~~  
12 ~~(c) of Section 667.5, while voluntarily intoxicated, under~~  
13 ~~circumstances which, but for the intoxication, would be~~  
14 ~~sufficient to prove beyond a reasonable doubt the mental~~  
15 ~~state required for a criminal offense, is guilty of that~~  
16 ~~offense.~~

17 (b) Evidence of voluntary intoxication is admissible  
18 solely on the issue of whether or not the defendant  
19 actually formed a required specific intent, ~~or, when~~  
20 ~~charged with murder, whether the defendant~~  
21 ~~premeditated, deliberated, or harbored express malice~~  
22 ~~aforethought in a crime other than a violent felony.~~

23 (c) Voluntary intoxication includes the voluntary  
24 ingestion, injection, or taking by any other means of any  
25 intoxicating liquor, drug, or other substance.

26 SEC. 2. Section 1127g is added to the Penal Code, to  
27 read:

1 1127g. In any criminal trial of a violent felony, as  
2 defined in subdivision (c) of Section 667.5, where  
3 evidence of the defendant's voluntary intoxication has  
4 been received, the court shall instruct the jury as follows:

5 "There has been admitted into evidence testimony that  
6 the defendant was voluntarily intoxicated at or near the  
7 time of the commission of the alleged crime specified in  
8 count \_\_\_\_\_. You may not consider that evidence as  
9 negating the capacity to form or the actual formation of  
10 any mental state or specific intent that constitutes an  
11 element of the crime charged in count \_\_\_\_\_."

12 SEC. 3. No reimbursement is required by this act  
13 pursuant to Section 6 of Article XIII B of the California  
14 Constitution because the only costs that may be incurred  
15 by a local agency or school district will be incurred  
16 because this act creates a new crime or infraction,  
17 eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section  
19 17556 of the Government Code, or changes the definition  
20 of a crime within the meaning of Section 6 of Article  
21 XIII B of the California Constitution.

22 Notwithstanding Section 17580 of the Government  
23 Code, unless otherwise specified, the provisions of this act  
24 shall become operative on the same date that the act  
25 takes effect pursuant to the California Constitution.

